PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 450

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-1-17-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6. Unless limited or prohibited by the articles of incorporation or bylaws, IC 26-2-8 applies to this article.**

SECTION 2. IC 23-1-18-1, AS AMENDED BY P.L.130-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) This article must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by this article. It may contain other information as well.

(d) The document must be **legible,** typewritten or printed ~~legible,~~ **or, if electronically transmitted, in a format that can be retrieved in a reproduced or typewritten form,** and otherwise suitable for processing.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be ~~executed.~~ **signed:**

(1) by the chairman of the board of directors of the domestic or foreign corporation or by any of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator;

(3) if the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary; or

(4) for purpose of annual or biennial reports, by:

(A) a registered agent;

(B) a certified public accountant; or

(C) an attorney;

employed by the business entity.

(g) Except as provided in subsection (m), the person ~~executing~~ **signing** the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the ~~person signs.~~ **document is signed.** A signature on a document authorized to be filed under this article may be:

(1) a facsimile; or

(2) made by an attorney in fact.

(h) A power of attorney relating to the signing of a document authorized to be filed under this article by an attorney in fact may but is not required to be:

(1) sworn to, verified, or acknowledged;

(2) signed in the presence of a notary public;

(3) filed with the secretary of state; or

(4) included in another written agreement.

However, the power of attorney must be retained in the records of the corporation.

(i) A document authorized to be filed under this article may but is not required to contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; and

(3) an acknowledgment, verification, or proof.

(j) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in or on the prescribed form.

(k) The document must be delivered to the office of the secretary of state for filing as described in section 1.1 of this chapter and the correct filing fee must be paid in the manner and form required by the secretary of state.

(l) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However,

if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(m) A signature on a document that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(n) As used in this subsection, "filed document" means a document filed with the secretary of state under any provision of this title except for IC 23-1-49 or IC 23-1-53-3. As used in this subsection, "plan" means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange. Whenever a provision under this article permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document:

(A) shall be set forth in the plan or filed document; and

(B) shall state the manner in which the facts shall become operative.

(2) The facts may include, but are not limited to:

(A) any of the following that is available in a nationally recognized news or information medium either in print or electronically:

(i) Statistical or market indices.

(ii) Market prices of any security or group of securities.

(iii) Interest rates.

(iv) Currency exchange rates.

(v) Similar economic or financial data;

(B) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document.

(B) The registered office of any entity required in a filed document.

(C) The registered agent of any entity required in a filed document.

(D) The number of authorized shares and designation of each class or series of shares.

(E) The effective date of a filed document.

(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(4) If a provision of a plan or filed document is made dependent on a fact ascertainable outside the plan or filed document, and that fact is not ascertainable by reference to a source described in subdivision (2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time the fact referred to is first ascertainable or changes. Articles of amendment under this subdivision:

(A) are considered to be authorized by the authorization of the original plan or filed document or plan to which the articles of amendment relate; and

(B) may be filed by the corporation without further action by the board of directors or the shareholders.

SECTION 3. IC 23-1-18-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Except as

provided in subsection (b) and section 5(c) of this chapter, a document accepted for filing is effective:

(1) at the time of filing on the date it is filed, as evidenced by **means** the secretary of ~~state's date and time endorsement~~ **state uses for endorsing the date and time of filing** on the original document; or

(2) at such later time on the date it is filed as is specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

SECTION 4. IC 23-1-18-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) A domestic or foreign corporation may correct a document filed by the secretary of state if: ~~the document.~~

(1) **the document** contains an incorrect statement or **an inaccuracy;**

(2) **the document** was defectively ~~executed,~~ **signed,** attested, sealed, verified, or acknowledged; **or**

(3) the electronic transmission of the document was defective.

(b) A document is corrected:

(1) by preparing articles of correction that:

(A) describe the document (including its filing date) or attach a copy of it to the articles;

(B) specify the incorrect statement **or inaccuracy** and the reason it is incorrect or the manner in which the execution was defective; and

(C) correct the incorrect statement, **inaccuracy,** or defective execution; and

(2) by delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons reasonably relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed or when the reliance ceased to be reasonable, whichever first occurs.

SECTION 5. IC 23-1-18-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the

refusal to the circuit or superior court of the county where the corporation's principal office (or, if none in Indiana, its registered office) is or will be located **not later than sixty (60) days after the receipt of the document from the secretary of state.** The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

SECTION 6. IC 23-1-20-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. "Articles of incorporation" ~~includes amended and restated articles of incorporation and articles of merger.~~ **means the original articles of incorporation and all amendments and restatements of the articles of incorporation. If an amendment of the articles of incorporation or any other document filed under this article restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents.**

SECTION 7. IC 23-1-20-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. "Beneficial owner", for purposes of IC 23-1-22-4, IC 23-1-30-4, and IC 23-1-43, means a person that:**

(1) individually or with or through any of its affiliates or associates beneficially owns the shares, directly or indirectly;

(2) individually or with or through any of its affiliates or associates, has:

(A) the right to acquire the shares at any time, under any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, options, or otherwise; or

(B) the right to vote the shares under any agreement, arrangement, or understanding.

However, a person is not a beneficial owner of shares tendered under a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange, and a person is not a beneficial owner of shares under clause (B) if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in

accordance with the applicable regulations under the Securities Exchange Act of 1934 and is not then reportable on a Schedule 13D under the Securities Exchange Act of 1934 or any comparable or successor report;

(3) has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting (except as provided in subdivision (2)), or disposing of the shares with any other person that beneficially owns or whose affiliates or associates beneficially own the shares, directly or indirectly; or

(4) has any derivative instrument that includes the opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the subject shares.

SECTION 8. IC 23-1-20-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. "Deliver" ~~includes mail.~~ **or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission.**

SECTION 9. IC 23-1-20-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 6.5. "Derivative instrument" means any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to an equity security or similar instrument with a value derived in whole or in part from the value of an equity security, whether or not the instrument or right is subject to settlement in the underlying security or otherwise.**

SECTION 10. IC 23-1-20-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.5. "Electronic transmission" or "electronically transmitted" means the transmission of an electronic record (as defined in IC 26-2-8-102(9)). The time and place of sending and of delivery by electronic means is governed by IC 26-2-8-114.**

SECTION 11. IC 23-1-20-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. "Entity" includes the following:

(1) Domestic corporation and foreign corporation.

(2) Not-for-profit corporation.

(3) Corporation incorporated under any other statute.

(4) Profit and not-for-profit unincorporated association.

(5) Business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest.

(6) Other entity (as defined in IC 23-1-20-17.5).

~~(6)~~ **(7)** State, United States, and foreign government.

SECTION 12. IC 23-1-20-17.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 17.5. "Other entity" means:**

(1) a limited liability company;

(2) a limited liability partnership;

(3) a limited partnership;

(4) a general partnership;

(5) a business trust;

(6) a real estate investment trust; or

(7) any entity that:

(A) is formed under the requirements of applicable law; and

(B) is not a corporation.

SECTION 13. IC 23-1-20-24.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 24.5. "Sign" or "signature" includes any manual, facsimile, or conformed signature, or an electronic signature (as defined in IC 26-2-8-102(10)).**

SECTION 14. IC 23-1-20-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29. (a) Notice under this article shall be in writing **(including electronic transmission)** unless oral notice is authorized by a corporation's articles of incorporation or bylaws.

(b) Notice, if otherwise in proper form under this article, may be communicated:

(1) in person;

(2) by telephone, telegraph, teletype, or other form of wire or wireless communication; ~~or~~

(3) by mail; **or**

(4) electronically.

If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast **or electronic** communication.

(c) Written notice by a domestic or foreign corporation to a shareholder is effective when mailed, if correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in Indiana) may be addressed to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in the most recent filing of the corporation under this article.

(e) Except as provided in subsection (c), written notice is effective at the earliest of the following:

(1) When received.

(2) Five (5) days after its mailing, as evidenced by the postmark or private carrier receipt, if correctly addressed to the address listed in the most current records of the corporation.

(3) On the date shown on the return receipt, if sent by registered or certified United States mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated.

(g) If this article prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this article, those requirements govern.

(h) Written notice, including reports or statements from the corporation, to shareholders who share a common address is effective if:

(1) the corporation delivers one (1) copy of a notice, report, or statement to the common address;

(2) the corporation addresses the notice, report, or statement to the:

(A) shareholders either as a group or to each of the shareholders individually; or

(B) shareholders in a form in which each of the shareholders has consented; and

(3) each of the shareholders consents to delivery of a single copy of the notice, report, or statement to the common address of the shareholders.

Consent given under subdivision (3) is revocable by a shareholder who delivers written notice of revocation to the corporation. If a shareholder delivers written notice of revocation to a corporation, the corporation shall begin providing individual notices, reports, or other statements to the shareholder not later than thirty (30) days after delivery of the written notice of revocation.

(i) A shareholder who fails to object to the receipt of the notice, report, or statement at a common address by written notice to the corporation within sixty (60) days after written notice by the

corporation of the corporation's intention to send single copies of notices to shareholders who share a common address as permitted by subsection (h) is considered to have consented to receiving a single copy at the common address.

SECTION 15. IC 23-1-23-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A corporate name:

(1) must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language; and

(2) except as provided in subsection (e), may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by IC 23-1-22-1 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state from:

(1) the corporate name of a corporation or other business entity incorporated or authorized to transact business in Indiana;

(2) a corporate name reserved or registered under section 2 or 3 of this chapter; ~~and~~

(3) a fictitious name adopted by a foreign corporation authorized to transact business in Indiana because the foreign corporation's true name was unavailable; and

~~(3)~~ **(4)** the corporate name of a not-for-profit corporation incorporated or authorized to transact business in Indiana.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) the other corporation files its written consent to the use, signed by any current officer of the corporation; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) A bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing the duties that a bank or trust company only is entitled to afford and perform.

(f) Except as provided in IC 23-1-49-6, this article does not control the use of fictitious names.

SECTION 16. IC 23-1-26-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation. ~~If shares are authorized to be issued for promissory notes or for promises to render services in the future, the corporation must comply with IC 23-1-53-2(b).~~

(c) The corporation may issue shares for such consideration received or to be received as the board of directors determines to be adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may (but is not required to) place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may (but is not required to) credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or in part.

SECTION 17. IC 23-1-26-5 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **(a)** A corporation, acting through its board of directors, may create or issue rights, options, or warrants for the purchase of shares or other securities of the corporation or any successor in interest of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares or other securities are to be issued. The rights, options, or warrants may be issued with or without consideration, and may (but need not) be issued pro rata.

(b) The terms and conditions of the rights, options, or warrants, including the rights, options, or warrants outstanding on July 1, 2009, may include, without limitation, restrictions or conditions that:

(1) preclude or limit the exercise, transfer, or receipt of the rights, options, or warrants by:

(A) a person owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation; or

(B) a transferee of the person described in clause (A); or

(2) invalidate or void the rights, options, or warrants held by the person described in subdivision (1)(A) or a transferee described in subdivision (1)(B).

SECTION 18. IC 23-1-26-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of any class or series of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 7(b) of this chapter. Unless so noted **or contained,** a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) to preserve exemptions under federal or state securities law; or

(3) for any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may, among other things:

(1) obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;

(2) obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;

(3) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(4) prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

SECTION 19. IC 23-1-29-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) **Unless directors are elected by written consent instead of at an annual meeting as permitted by section 4 of this chapter,** a corporation ~~must~~ **shall** hold a meeting of the shareholders annually at a time stated in or fixed in accordance with the bylaws. **However, if a corporation's articles of incorporation authorize shareholders to cumulate the shareholder's votes when electing directors as provided under IC 23-1-30-9, directors may not be elected by less than unanimous consent.**

(b) Annual shareholders' meetings may be held in or out of Indiana at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(d) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in an annual shareholders' meeting by, or through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

SECTION 20. IC 23-1-29-2 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A corporation with more than fifty **(50)** shareholders must hold a special meeting of shareholders on call of its board of directors or the person or persons (including, but not limited to, shareholders or officers) specifically authorized to do so by the articles of incorporation or bylaws. If such corporation's articles of incorporation require the holding of a special meeting on the demand of its shareholders, but do not specify the percentage of votes entitled to be cast on an issue necessary to demand such special meeting, the board of directors may establish such percentage in the corporation's bylaws. Absent adoption of such a bylaw provision, the demand for a special meeting must be made by the holders of all of the votes entitled to be cast on an issue.

(b) A corporation with fifty (50) or fewer shareholders must hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons (including, but not limited to, shareholders or officers) specifically authorized to do so by the articles of incorporation or bylaws; or

(2) if the holders of at least twenty-five percent (25%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to such corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(c) Special shareholders' meetings may be held in or out of Indiana at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) If not otherwise fixed under section 3 or 7 of this chapter, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

~~(d)~~ **(e)** Only business within the purpose or purposes described in the meeting notice required by section 5(c) of this chapter may be conducted at a special shareholders' meeting.

~~(e)~~ **(f)** If the articles of incorporation or bylaws so provide, any or all shareholders may participate in a special meeting of shareholders by, or through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

SECTION 21. IC 23-1-29-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Action required

or permitted by this article to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one (1) or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, **bearing the date of signature,** and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

~~(b) If not otherwise determined under section 7 of this chapter, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).~~

~~(c) Action taken under this section is effective when the last shareholder signs the consent, unless the consent specifies a different prior or subsequent effective date.~~

~~(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.~~

~~(e) If this article requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that, under this article, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.~~

(b) This subsection does not apply to a corporation that has a class of voting shares registered with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934. Unless otherwise provided in the articles of incorporation, any action required or permitted by this article to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action taken are signed by the holders of outstanding shares having at least the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under section 7 of this chapter, and if prior board action is not required with respect to the action to be taken without a meeting, the record date for determining the

shareholders entitled to take action without a meeting is the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 7 of this chapter, and if prior board action is required with respect to the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board taking the prior action is adopted. A written consent to take a corporate action is not valid unless, not later than sixty (60) days after the earliest date on which a consent delivered to the corporation as required by this section was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

(d) A consent signed in accordance with this section has the effect of a vote taken at a meeting and may be described as a vote in any document. Unless the:

(1) consent specifies a different prior or subsequent effective date; or

(2) articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents;

the action taken by written consent is effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If this article requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten (10) days after:

(1) written consents sufficient to take the action have been delivered to the corporation; or

(2) the date that tabulation of the written consents has been completed under an authorization as described in subsection (d).

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this article, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of

the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after:

(1) written consents sufficient to take the action have been delivered to the corporation; or

(2) the date that tabulation of the written consents has been completed under an authorization as described in subsection (d).

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this article, would have been required to be sent to voting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(g) The notice requirements of subsections (e) and (f) do not delay the effectiveness of actions taken by written consent, and a failure to comply with the notice requirements does not invalidate actions taken by written consent. However, this subsection does not limit the power of a court to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give timely notice.

(h) An electronic transmission may be used to consent to an action if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent, or the shareholder's attorney in fact.

(i) Unless otherwise determined by a resolution of the board, delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

SECTION 22. IC 23-1-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) A shareholder may waive any notice required by this article, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver **must be:**

(1) in writing;

(2) signed by the shareholder entitled to the notice; ~~must be in writing~~ and ~~be~~

(3) delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the

meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

SECTION 23. IC 23-1-33-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) **Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4 or a shorter term is specified in the bylaws for a director nominee failing to receive a specified vote for election,** the terms of all other directors expire at:

(1) the next; **or**

(2) if the director's terms are staggered in accordance with section 6 of this chapter, the applicable second or third;

annual shareholders' meeting following their election. ~~unless their terms are staggered under section 6 of this chapter.~~

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the end of the term for which the director's predecessor was elected.

(e) **Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4,** despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

SECTION 24. IC 23-1-33-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) The articles of incorporation or the bylaws may provide for staggering their terms by dividing the total number of directors into either:

(1) two (2) groups, with each group containing one-half (1/2) of the total, as near as may be; or

(2) if there are more than two (2) directors, three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) In the event that terms are staggered under subsection (a), the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual

shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

(c) A corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934 shall provide for staggering the terms of directors in accordance with this section unless, not later than thirty (30) days after the later of:

(1) July 1, 2009; or

(2) the time when the corporation's voting shares are registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934;

the board of directors of the corporation adopts a bylaw expressly electing not to be governed by this subsection. However, an election not to be governed by this subsection may be rescinded by a subsequent action of the board of directors unless the original articles of incorporation contain a provision expressly electing not to be governed by this subsection.

(d) If the board fails to provide for the staggering of the terms of directors as required by subsection (c), the board must be staggered as follows:

(1) The first group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without any remaining.

(2) The second group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest higher whole number if the number of directors is not divisible by three (3) without two (2) remaining.

(3) The third group comprises one-third (1/3) of the directors or one-third (1/3) of the directors rounded to the nearest lower whole number if the number of directors is not divisible by three (3) without any remaining.

The directors shall be placed into the groups established by this subsection alphabetically by last name.

SECTION 25. IC 23-1-33-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A director may resign at any time by delivering written notice:

(1) to the board of directors, its chairman, or the secretary of the corporation; or

(2) if the articles of incorporation or bylaws so provide, to another

designated officer.

~~(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.~~

(b) A resignation is effective when the notice is delivered unless the notice specifies:

(1) a later effective date; or

(2) an effective date determined upon the happening of an event.

(c) A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that the resignation is irrevocable.

SECTION 26. IC 23-1-34-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) ~~Unless~~ **Except to the extent that** the articles of incorporation or bylaws ~~provide otherwise,~~ **require that action by the board of directors be taken at a meeting,** action required or permitted by this article to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be:

(1) evidenced by one (1) or more written consents describing the action taken;

(2) signed by each director; ~~and~~

(3) included in the minutes or filed with the corporate records reflecting the action taken; **and**

(4) delivered to the secretary.

(b) Action taken under this section is effective when the last director signs the consent, unless:

(1) the consent specifies a different prior or subsequent effective date, **in which case the consent is effective on that date; or**

(2) no effective date contemplated by subdivision (1) is designated and the action taken under this section is taken electronically as contemplated by IC 26-2-8. If action is taken as contemplated by IC 26-2-8, the effective date is determined in accordance with IC 26-2-8.

A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation before the delivery to the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) Action taken without a meeting is an organic action (as defined in IC 26-2-8-102(15)).

SECTION 27. IC 23-1-35-1 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A director shall, based on facts then known to the director, discharge the duties as a director, including the director's duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging the director's duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director may, in considering the best interests of a corporation, consider the effects of any action on shareholders, employees, suppliers, and customers of the corporation, and communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent.

(e) A director is not liable for any action taken as a director, or any failure to take any action, **regardless of the nature of the alleged breach of duty, including alleged breaches of the duty of care, the duty of loyalty, and the duty of good faith,** unless:

(1) the director has breached or failed to perform the duties of the director's office in compliance with this section; and

(2) the breach or failure to perform constitutes willful misconduct or recklessness.

(f) In enacting this article, the general assembly established corporate governance rules for Indiana corporations, including in this chapter, the standards of conduct applicable to directors of Indiana corporations, and the corporate constituent groups and interests that a director may take into account in exercising the director's business judgment. The general assembly intends to reaffirm certain of these

corporate governance rules to ensure that the directors of Indiana corporations, in exercising their business judgment, are not required to approve a proposed corporate action if the directors in good faith determine, after considering and weighing as they deem appropriate the effects of such action on the corporation's constituents, that such action is not in the best interests of the corporation. In making such determination, directors are not required to consider the effects of a proposed corporate action on any particular corporate constituent group or interest as a dominant or controlling factor. Without limiting the generality of the foregoing, directors are not required to render inapplicable any of the provisions of IC 23-1-43, to redeem any rights under or to render inapplicable a shareholder rights plan adopted pursuant to IC 23-1-26-5, or to take or decline to take any other action under this article, solely because of the effect such action might have on a proposed acquisition of control of the corporation or the amounts that might be paid to shareholders under such an acquisition. Certain judicial decisions in Delaware and other jurisdictions, which might otherwise be looked to for guidance in interpreting Indiana corporate law, including decisions relating to potential change of control transactions that impose a different or higher degree of scrutiny on actions taken by directors in response to a proposed acquisition of control of the corporation, are inconsistent with the proper application of the business judgment rule under this article. Therefore, the general assembly intends:

(1) to reaffirm that this section allows directors the full discretion to weigh the factors enumerated in subsection (d) as they deem appropriate; and

(2) to protect both directors and the validity of corporate action taken by them in the good faith exercise of their business judgment after reasonable investigation.

(g) In taking or declining to take any action, or in making or declining to make any recommendation to the shareholders of the corporation with respect to any matter, a board of directors may, in its discretion, consider both the short term and long term best interests of the corporation, taking into account, and weighing as the directors deem appropriate, the effects thereof on the corporation's shareholders and the other corporate constituent groups and interests listed or described in subsection (d), as well as any other factors deemed pertinent by the directors under subsection (d). If a determination is made with respect to the foregoing with the approval of a majority of the disinterested directors of the board of directors, that determination shall conclusively be presumed to be valid unless it can be

demonstrated that the determination was not made in good faith after reasonable investigation.

(h) For the purposes of subsection (g), a director is disinterested if:

(1) the director does not have a conflict of interest, within the meaning of section 2 of this chapter, in connection with the action or recommendation in question;

(2) in connection with matters described in IC 23-1-32 the director is disinterested (as defined in IC 23-1-32-4(d));

(3) in connection with any matter involving or otherwise affecting:

(A) a control share acquisition (as defined in IC 23-1-42-2) or any matter related to a control share acquisition under IC 23-1-42 or other provisions of this article;

(B) a business combination (as defined in IC 23-1-43-5) or any matter related to a business combination under IC 23-1-43 (including a person becoming an interested shareholder) or other provisions of this article; or

(C) any transaction that may result in a change of control (as defined in IC 23-1-22-4) of the corporation;

the director is not an employee of the corporation; and

(4) in connection with any matter involving or otherwise affecting:

(A) a control share acquisition (as defined in IC 23-1-42-2) or any matter related to a control share acquisition under IC 23-1-42 or other provisions of this article;

(B) a business combination (as defined in IC 23-1-43-5) or any matter related to a business combination under IC 23-1-43 (including a person becoming an interested shareholder) or other provisions of this article; or

(C) any transaction that may result in a change of control (as defined in IC 23-1-22-4) of the corporation;

the director is not an affiliate or associate of, or was not nominated or designated as a director by, a person proposing any of the transactions described in clause (A), (B), or (C).

(i) A person may be disinterested under this section even though the person is a director or shareholder of the corporation.

SECTION 28. IC 23-1-35-5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. (a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of**

the corporation on the ground that the opportunity should have first been offered to the corporation, if one (1) or more of the following applies:

(1) The opportunity and all material facts concerning the opportunity then known to the director were disclosed to or known by the board of directors or a committee of the board of directors before the director became legally obligated regarding the opportunity, and the board of directors or committee of the board of directors disclaimed the corporation's interest in the opportunity.

(2) The opportunity and all material facts concerning the business opportunity then known to the director were disclosed to or known by the shareholders entitled to vote before the director became legally obligated regarding the opportunity, and the shareholders disclaimed the corporation's interest in the opportunity.

(b) For purposes of subsection (a)(1), a business opportunity is disclaimed if approved in the manner provided in IC 23-1-35-2(c) as if the business opportunity were a conflict of interest transaction.

(c) For purposes of subsection (a)(2), a business opportunity is disclaimed if approved in the manner provided in IC 23-1-35-2(d) as if the business opportunity were a conflict of interest transaction.

(d) In any proceeding seeking equitable relief or other remedies against a director for the director allegedly improperly taking advantage of a business opportunity, the fact that the director did not employ the procedure described in subsection (a) before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation under the circumstances.

SECTION 29. IC 23-1-38.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. **(a)** If a domestic or foreign business corporation, a nonprofit corporation, or another entity may not be a party to a merger without the approval of the department of financial institutions or the department of insurance, the corporation or other entity may not be a party to a transaction under this chapter without the prior approval of the department of financial institutions or the department of insurance.

(b) Property held in trust or for a charitable purpose under the

law of this state by a domestic or foreign other entity shall not, by any transaction under this chapter, be diverted from the objects for which it was donated, granted, or devised.

SECTION 30. IC 23-1-38.5-11, AS AMENDED BY P.L.130-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. **(a)** A plan of entity conversion must include:

(1) a statement of the type of other entity that the surviving entity will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) the terms and conditions of the conversion;

(3) the manner and basis of converting the shares or interests of the converting entity following its conversion into shares, interests, or other securities, obligations, rights to acquire interests or other securities of the surviving entity or cash, other property, or any combination of the types of assets referred to in this subdivision; and

(4) the full text, as in effect immediately after consummation of the conversion, of the organic documents of the surviving entity.

(b) The plan of entity conversion may also include a provision that the plan may be amended before filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders or interest holders the plan may not be amended to change:

(1) the amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan by the shareholders or interest holders; or

(2) the organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to IC 23-1-38-2.

SECTION 31. IC 23-1-39-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Unless the articles of incorporation **or section 4 of this chapter** provide otherwise, only a corporation's board of directors may amend or repeal the corporation's bylaws.

SECTION 32. IC 23-1-39-4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) This section does not apply to any corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934.**

(b) Unless the articles of incorporation specifically prohibit the adoption of a bylaw under this section, alter the vote specified in IC 23-1-30-9(a), or provide for cumulative voting, a corporation may elect in the corporation's bylaws to be governed in the election of directors as follows:

(1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes.

(2) To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present. However, a nominee who is elected but receives more votes against than for election shall serve as a director for a term that ends on the date that is the earlier of:

(A) ninety (90) days after the date on which the voting results are determined; or

(B) the date on which an individual is selected by the board of directors to fill the office held by the director, which selection constitutes the filling of a vacancy by the board to which IC 23-1-33-9 applies.

Subject to subdivision (3), a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period described in clause (A).

(3) The board of directors may select a qualified individual to fill the office held by a director who received more votes against than for election.

(c) Subsection (b) does not apply to an election of directors by a voting group if:

(1) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(2) absent a provision described in subdivision (1), at a time fixed by the board of directors that is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur;

there are more candidates for election by the voting group than the number of directors to be elected, one (1) or more of whom are properly proposed by shareholders. An individual is not considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(d) A bylaw under which a corporation elects to be governed by this section may be repealed:

(1) if originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(2) if adopted by the board of directors, by the board of directors.

SECTION 33. IC 23-1-40-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) the ~~plan of~~ **name of the surviving or acquiring corporation following the** merger or share exchange;

(2) if shareholder approval was not required, a statement to that effect;

(3) if approval of the shareholders of one (1) or more corporations party to the merger or share exchange was required:

(A) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the ~~plan~~ **merger or share exchange** as to each corporation; and

(B) either the total number of votes cast for and against the ~~plan~~ **merger or share exchange** by each voting group entitled to vote separately on the ~~plan~~ **merger or share exchange** or the total number of undisputed votes cast for the ~~plan~~ **merger or share exchange** separately by each voting group and a statement that the number cast for the ~~plan~~ **merger or share exchange** by each voting group was sufficient for approval by that voting group.

(b) Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles of merger or share exchange are filed.

(c) The surviving corporation resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county in Indiana in which the corporation has real property at the time of the merger, the title to which will be transferred by the merger, a file-stamped copy of the articles of merger. If the ~~plan~~ **articles** of merger ~~sets~~ **set** forth amendments to the articles of incorporation of the surviving corporation that change its corporate name, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county in Indiana in which the

surviving **or acquiring** corporation has any real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in corporate name.

SECTION 34. IC 23-1-41-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. ~~(a) A corporation may, on the terms and conditions and for the consideration determined by the board of directors.~~ **The approval of the shareholders of a corporation is not required unless the articles of incorporation require the approval of the shareholders to:**

(1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of ~~its~~ **the corporation's** property in the usual and regular course of business;

(2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of ~~its~~ **the corporation's** property whether or not in the usual and regular course of business; or

(3) transfer any or all of ~~its~~ **the corporation's** property to a corporation all the shares of which are owned by the corporation.

~~(b) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) is not required.~~

SECTION 35. IC 23-1-41-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. ~~(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.~~

~~(b) For a transaction to be authorized:~~

~~(1) the board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and~~

~~(2) the shareholders entitled to vote must approve the transaction.~~

~~(c) The board of directors may condition its submission of the proposed transaction on any basis.~~

~~(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance~~

~~with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and must contain or be accompanied by a description of the transaction.~~

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 1 of this chapter, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations before taxes or revenues from continuing operations for the fiscal year, in each case of the corporation and the corporation's subsidiaries on a consolidated basis, the corporation is conclusively considered to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the shareholders for the shareholder's approval. The board of directors shall transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make the recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition the board of directors' submission of a disposition to the shareholders under subsection (b) on any basis.

(d) If:

(1) a disposition is required to be approved by the shareholders under subsection (a); and

(2) the approval is to be given at a meeting;

the corporation shall notify each shareholder, whether the shareholder is entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval in accordance with IC 23-1-29-5. The notice must state that the purpose or one (1) of the purposes of the meeting is to consider the disposition and must contain a description of the disposition, including the terms

and conditions of the disposition and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors (acting under subsection (c)) ~~require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all~~ **requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the shareholders requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of** the votes entitled to be cast on the ~~transaction.~~ **disposition exists.**

~~(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.~~

(f) After a disposition has been approved by the shareholders under subsection (b), and at any time before the disposition has been consummated, the disposition may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A ~~transaction~~ **disposition** that constitutes a distribution is governed by IC 23-1-28 and not by this section.

(h) A disposition of assets in the course of dissolution under IC 23-1-45, IC 23-1-46, IC 23-1-47, or IC 23-1-48 is not governed by this section.

(i) The assets of a direct or indirect consolidated subsidiary shall be considered the assets of the parent corporation for the purposes of this section.

SECTION 36. IC 23-1-42-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) As used in this chapter, "issuing public corporation" means a corporation that has:

(1) one hundred (100) or more shareholders;

(2) its principal place of business **or** its principal office **in Indiana,** or ~~substantial~~ **that owns or controls** assets within Indiana **having a fair market value of more than one million dollars ($1,000,000);** and

(3) either:

(A) more than ten percent (10%) of its shareholders resident in Indiana;

(B) more than ten percent (10%) of its shares owned **of record or owned beneficially** by Indiana residents; or

(C) ~~ten~~ **one** thousand ~~(10,000)~~ **(1,000)** shareholders resident in Indiana.

(b) The residence of a **record** shareholder is presumed to be the

address appearing in the records of the corporation.

~~(c) Shares held by banks (except as trustee or guardian), brokers or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this section.~~

SECTION 37. IC 23-1-43-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. As used in this chapter, "beneficial owner", when used with respect to any shares, ~~means a person that:~~

~~(1) individually or with or through any of its affiliates or associates, beneficially owns the shares (directly or indirectly);~~

~~(2) individually or with or through any of its affiliates or associates, has:~~

~~(A) the right to acquire the shares (whether the right is exercisable immediately or only after the passage of time) under any agreement, arrangement, or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise (however, a person is not considered the beneficial owner of shares tendered under a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange); or~~

~~(B) the right to vote the shares under any agreement, arrangement, or understanding (whether or not in writing) (however, a person is not considered the beneficial owner of any shares under this clause if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable regulations under the Exchange Act and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report); or~~

~~(3) has any agreement, arrangement, or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except voting under a revocable proxy or consent as described in subdivision (2)(B)), or disposing of the shares with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.~~

has the meaning set forth in IC 23-1-20-3.5.

SECTION 38. IC 23-1-44-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.5. As used in this chapter, "preferred shares" means a class or series of shares in which the**

holders of the shares have preference over any other class or series with respect to distributions.

SECTION 39. IC 23-1-44-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party if:

(A) shareholder approval is required for the merger by IC 23-1-40-3 or the articles of incorporation; and

(B) the shareholder is entitled to vote on the merger.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale.

(4) The approval of a control share acquisition under IC 23-1-42.

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) This section does not apply to the holders of shares of any class or series if, on the date fixed to determine the shareholders entitled to receive notice of and vote at the meeting of shareholders at which the merger, plan of share exchange, or sale or exchange of property is to be acted on, the shares of that class or series were

~~(1) registered on a United States securities exchange registered under the Exchange Act (as defined in IC 23-1-43-9); or~~

~~(2) traded on the National Association of Securities Dealers, Inc. Automated Quotations System Over-the-Counter Markets — National Market Issues or a similar market.~~

a covered security under Section 18(b)(1)(A) or 18(b)(1)(B) of the Securities Act of 1933, as amended.

(c) The articles of incorporation as originally filed or any

amendment to the articles of incorporation may limit or eliminate the right to dissent and obtain payment for any class or series of preferred shares. However, any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates the right to dissent and obtain payment for any shares:

(1) that are outstanding immediately before the effective date of the amendment; or

(2) that the corporation is or may be required to issue or sell after the effective date of the amendment under any exchange or other right existing immediately before the effective date of the amendment;

does not apply to any corporate action that becomes effective within one (1) year of the effective date of the amendment if the action would otherwise afford the right to dissent and obtain payment.

~~(c)~~ **(d)** A shareholder:

(1) who is entitled to dissent and obtain payment for the shareholder's shares under this chapter; or

(2) who would be so entitled to dissent and obtain payment but for the provisions of subsection (b);

may not challenge the corporate action creating (or that, but for the provisions of subsection (b), would have created) the shareholder's entitlement.

(e) Subsection (d) does not apply to a corporate action that was approved by less than unanimous consent of the voting shareholders under IC 23-1-29-4.5(b) if both of the following apply:

(1) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected.

(2) The proceeding challenging the corporate action is commenced not later than ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

SECTION 40. IC 23-15-1-1, AS AMENDED BY P.L.106-2008, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as otherwise provided in section 2 of this chapter,

~~(1)~~ a person **or general partnership** conducting or transacting business in Indiana under a name, designation, or title other than the real name of the person **or general partnership** conducting

or transacting ~~such~~ **the** business

~~(2) a corporation conducting business in Indiana under a name, designation, or title other than the name of the corporation as shown by its articles of incorporation;~~

~~(3) a foreign corporation conducting business in Indiana under a name, designation, or title other than the name of the foreign corporation as shown by its application for certificate of authority to transact business in Indiana;~~

~~(4) a limited partnership conducting business in Indiana under a name, designation, or title other than the name of the limited partnership as shown by its certificate of limited partnership;~~

~~(5) a foreign limited partnership conducting business in Indiana under a name, designation, or title other than the name of the limited partnership as shown by its application for registration;~~

~~(6) a limited liability company conducting business in Indiana under a name, designation, or title other than as shown by its articles of organization;~~

~~(7) a foreign limited liability company conducting business in Indiana under a name, designation, or title other than the name of the limited liability company as shown by its application for registration;~~

~~(8) a limited liability partnership conducting business in Indiana under a name, designation, or title other than the name of the limited liability partnership as shown by its application for registration; and~~

~~(9) a foreign limited liability partnership conducting business in Indiana under a name, designation, or title other than the name of the limited liability partnership as shown by its application for registration;~~

shall file for record, in the office of the recorder of each county in which a place of business or an office of the person ~~limited partnership, foreign limited partnership, limited liability company, foreign limited liability company, corporation, or foreign corporation~~ **or general partnership** is situated, a certificate stating the assumed name or names to be used and ~~in the case of a person,~~ the full name and address of the person **or general partnership** engaged in or transacting business. ~~or, in the case of a corporation, foreign corporation, limited liability company, foreign limited liability company, limited partnership, or foreign limited partnership, the full name and the address of the corporation's, limited liability company's, or limited partnership's principal office in Indiana.~~

(b) The recorder shall keep a record of the certificates filed under

this section and shall keep an index of the certificates showing, in alphabetical order, the names of the persons ~~the names of the partnerships, the names of the limited liability companies, the corporate names of the corporations~~ **and general partnerships** having ~~such~~ certificates on file in the recorder's office, and the assumed name or names which they intend to use in carrying on their businesses as shown by the certificates.

(c) Before the dissolution of any business for which a certificate is on file with the recorder, the person ~~limited liability company, partnership, or corporation~~ **or general partnership** to which the certificate appertains shall file a notice of dissolution for record in the recorder's office.

(d) The county recorder shall charge a fee in accordance with IC 36-2-7-10 for each certificate, notice of dissolution, and notice of discontinuance of use filed with the recorder's office and recorded under this chapter. The funds received shall be receipted as county funds the same as other money received by the recorders.

(e) ~~A corporation, limited liability company, or limited partnership subject to this chapter~~ **Except as provided in section 2 of this chapter:**

(1) a corporation conducting business in Indiana under a name, designation, or title other than the name of the corporation as shown by its articles of incorporation;

(2) a foreign corporation conducting business in Indiana under a name, designation, or title other than the name of the foreign corporation as shown by its application for a certificate of authority to transact business in Indiana;

(3) a limited partnership conducting business in Indiana under a name, designation, or title other than the name of the limited partnership as shown by its certificate of limited partnership;

(4) a foreign limited partnership conducting business in Indiana under a name, designation, or title other than the name of the limited partnership as shown by its application for registration;

(5) a limited liability company conducting business in Indiana under a name, designation, or title other than as shown by its articles of organization;

(6) a foreign limited liability company conducting business in Indiana under a name, designation, or title other than the name of the limited liability company as shown by its application for registration;

(7) a limited liability partnership conducting business in Indiana under a name, designation, or title other than the name of the limited liability partnership as shown by its application for registration; and

(8) a foreign limited liability partnership conducting business in Indiana under a name, designation, or title other than the name of the limited liability partnership as shown by its application for registration;

shall ~~in addition to filing the certificate provided for in subsection (a),~~ file with the secretary of state ~~a copy of each certificate.~~ **a certificate stating the assumed name or names to be used and the full name and address of the corporation's, limited partnership's, limited liability company's, or limited liability partnership's, foreign or domestic, principal office in Indiana.**

(f) A person, **general** partnership, **corporation, limited partnership,** limited liability company, or ~~corporation~~ **limited liability partnership, foreign or domestic,** that has filed a certificate of assumed business name or names under subsection (a) or (e) may file a notice of discontinuance of use of assumed business name or names with the secretary of state ~~and~~ **or** with the recorder's office in which the certificate was filed or transferred. The secretary of state ~~and~~ **or** the recorder shall keep a record of notices filed under this subsection.

~~(g) A corporation or limited partnership, domestic or foreign, that is subject to this chapter and that does not have a place of business or an office in Indiana, shall file the certificate required under subsection (a) in the office of the recorder of the county where the corporation's or limited partnership's registered office is located. The certificate must state the assumed name or names to be used, the name of the registered agent, and the address of the registered office. The corporation or limited partnership must comply with the requirements in subsection (c).~~

(g) This subsection applies to a foreign or domestic corporation, limited partnership, limited liability company, or limited liability partnership that, before July 1, 2009:

(1) filed a certificate stating the assumed name or names to be used in carrying out the entity's business; and

(2) filed the certificate:

(A) with the secretary of state; and

(B) in the recorder's office.

The entity shall file a notice of dissolution or notice of discontinuance of use of the assumed business name or names with the secretary of state and with the recorder's office in which the

certificate was filed or transferred.

(h) The secretary of state shall collect the following fees when a copy of a certificate is filed with the secretary of state under subsection (e):

(1) A fee of:

(A) twenty dollars ($20) for an electronic filing; or

(B) thirty dollars ($30) for a filing other than an electronic filing;

from a corporation (other than a nonprofit corporation), limited liability company, or a limited partnership.

(2) A fee of:

(A) ten dollars ($10) for an electronic filing; or

(B) twenty-six dollars ($26) for a filing other than an electronic filing;

from a nonprofit corporation.

The secretary of state shall prescribe the electronic means of filing certificates for purposes of collecting fees under this subsection. A fee collected under this subsection is in addition to any other fee collected by the secretary of state.

SECTION 41. IC 26-2-8-104, AS AMENDED BY P.L.110-2008, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 104. (a) This chapter does not require that a record or signature be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter only applies to transactions between parties each of which has agreed to conduct transactions electronically. An agreement to conduct transactions electronically is determined from the context and surrounding circumstances, including the parties' conduct. A constituent of a business entity and a business entity are presumed to have agreed to conduct organic actions electronically unless and to the extent:

(1) the governing documents of the business entity limit or prohibit, in whole or in part, the use of electronic signatures, electronic records, or both; or

(2) the business entity expressly states the method, means, or requirement by which a constituent may respond to or participate in any organic action, including imposing a requirement that participants use a specific form of writing, record, or signature.

Unless and to the extent limited or prohibited **in the governing documents of a business entity,** any electronic record or electronic signature to be sent to a constituent is properly sent if sent in the

manner and to the electronic address or other means of receipt designated by the constituent to receive the electronic record or electronic signature as shown in the current records of the business entity. If the electronic record is a notice, it is effective when sent. Unless and to the extent limited or prohibited, any electronic record or electronic signature sent by a constituent to a business entity shall be considered properly sent if it is sent in a manner designated by the business entity to an electronic address or other location designated by the business entity in a publication or notice provided by the business entity to the constituent. If the electronic record is a notice, it is effective upon receipt. The publication or notice may be included in the governing documents of the business entity, may be communicated to the constituent in writing, or may be transmitted by any other means selected by the business entity that is reasonably likely to convey the information to the constituent. A constituent or business entity may revoke or change any instruction regarding the manner, electronic address, or means of receipt the person requires for electronic records or electronic signatures by sending notice of the change and the corresponding new information.

(c) If a party agrees to conduct a transaction electronically, this chapter does not prohibit the party from refusing to conduct other transactions electronically. This subsection may not be varied by agreement.

(d) Except as otherwise provided in this chapter, the effect of any provision of this chapter may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter, if applicable, and otherwise by other applicable law.

SECTION 42. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 23-1-53-2; IC 23-1-29-4.5.

President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____